

## **REMARKS**

### **I. Overview**

These remarks are set forth in response to the Non-Final Office Action.

Presently, claims 1, 4 through 9, 12 through 19 and 21 through 26 are pending in the Patent Application. Claims 1, 12 and 19 are independent in nature. In the Non-Final Office Action, Examiner has rejected claims 1, 4 through 9, 12 through 19 and 21 through 26 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2004/0088688 by Hejlsberg et al. (Hejlsberg) in view of U.S. Patent No. 7,185,046 to Ferstl et al. (Ferstl). In response, Applicant has amended claims 1, 6, 7, 8, 9, 12, 15, 16, 17, 18 and 19.

### **II. The Applicants' Invention**

The Applicant has invented a method, system, and computer program product for automatically developing objects using context derived models residing within a computational grid. In Applicant's invention, an object meta language (OML) is used to allow a programmer to define one or more objects for an application. Specifically, using OML, the programmer creates a document describing the objects of the application. The OML document is submitted to a group of context-derived models residing at various computational nodes on the grid. A web service is used to parse the OML document and select an appropriate node in the grid. Thereafter, the OML document is provided to the selected node, which applies object description variables using a transform language to define the required objects of the application. Finally, the defined object or objects are returned to the programmer for deployment as the application.

III. Rejections Under 35 U.S.C. § 103(a)

On October 10, 2007, the Patent Office issued the "Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in KSR International Co. v. Teleflex Inc.," 73 Fed. Reg. 57,526 (2007) (hereinafter the Examination Guidelines). Section III is entitled "Rationales To Support Rejections Under 35 U.S.C. 103." Within this section is the following quote from the Supreme Court: "rejections on obviousness grounds cannot be sustained by merely conclusory statements; instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." KSR Int'l Co., 127 S. Ct. 1727, 1741 (2007) (quoting In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006)).

Referring to the first column on page 57,529 of the Examination Guidelines, the following is a list of rationales that may be used to support a finding of obviousness under 35 U.S.C. § 103:

- (A) Combining prior art elements according to known methods to yield predictable results;
- (B) Simple substitution of one known element for another to obtain predictable results;
- (C) Use of known technique to improve similar devices (methods, or products) in the same way;
- (D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results;
- (E) "Obvious to try" - choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success;
- (F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art;
- (G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention.

Upon reviewing the Examiner's analysis in the paragraph spanning pages 3 through 6 of the Non-Final Office Action, the Examiner appears to be employing rationale (A). If the Examiner is not relying upon rationale (A), Applicant requests that the Examiner clearly identify the rationale, as described in the Examination Guidelines, being employed by the Examiner in rejecting the claims under 35 U.S.C. § 103.

With respect to rationale (A), the Examination Guidelines set forth a precise process for which the Examiner must follow in order to establish a prima facie case of obviousness under 35 U.S.C. § 103(a). Specifically, to reject a claim based on this rationale, Office personnel must resolve the Graham factual inquiries. Thereafter, Office personnel must then articulate the following:

- (1) a finding that the prior art included each element claimed, although not necessarily in a single prior art reference, with the only difference between the claimed invention and the prior art being the lack of actual combination of the elements in a single prior art reference;
- (2) a finding that one of ordinary skill in the art could have combined the elements as claimed by known methods, and that in combination, each element merely would have performed the same function as it did separately;
- (3) a finding that one of ordinary skill in the art would have recognized that the results of the combination were predictable; and
- (4) whatever additional findings based on the Graham factual inquiries may be necessary, in view of the facts of the case under consideration, to explain a conclusion of obviousness.

In consideration of amended claims 1, 12 and 19, Applicant believes that a finding cannot be articulated that the combination of Hejlsberg and Ferstl include each element claimed with the only different between the claimed invention and Hejlsberg and Ferstl being the lack of actual combination of the elements in a single prior art reference.

In this regard, amended claims 1, 12 and 19 refer to the providing of a description of a computing application to a Web service which in turn, selects a coding module in a node within a computational grid corresponding to parameters identified in the description. For the convenience of Examiner, exemplary claim 1 AS AMENDED is reproduced as follows:

1. A method for automatically generating computer program code comprising the steps of:
  - receiving from an author over a computer communications network a description of a computing application in a web service executing in memory by a processor in a computer;
  - parsing said description in said web service *to identify object parameters for said computing application*;
  - locating a coding module *corresponding to at least one of the object parameters* within a node contained within the computational grid coupled to the web service over a computer communications network, the computational grid comprising a plurality of computers sharing computational resources, said computational grid further comprising a plurality of coding modules;
  - supplying said description to said node* contained within the computational grid;
  - applying said description to said located coding module to generate at least one output object corresponding to the identified object parameters; and
  - returning said at least one output object to the author over the computer communications network.

Thus, integral to each amended independent claim is the identification of object parameters for the computing application within the description of the computing application. Further integral to each amended independent claim is the location of a coding module in a node within the computational grid that corresponds to at least one of the identified object parameters. Even further integral to each amended independent claim is the supply of the description to the node so that the located coding module can generate an output object for at least one of the identified object parameters.

While Examiner is correct that Ferstl clearly discloses a computational grid of nodes, the combination of Ferstl and Hejlsberg (and especially Ferstl) provides no teaching (not even a hint of a teaching) directed to the selection of a coding module in a node that corresponds to identified object parameters in a description of a computing application. To wit, the cited portion of Ferstl—namely column 1, line 65 through column 2, line 8, only describes the receipt of an instruction to distribute a computing job to a selected computing device in a computing grid. There is no mention that a "coding module" in a node (equated by Examiner to be a 'computing device') is selected based upon identified object parameters in a description of a computing application. So much, however is required by the amended claim language of claims 1, 12 and 19.

Additionally, it is important to note that several critical claim terms within amended claims 1, 12 and 19 are to be properly construed by Examiner in reviewing the present amendment when comparing amended claims 1, 12 and 19 to the combination of Hejlsberg and Ferstl:

1. "description of a computing application"
2. "object parameters for the computing application"
3. "coding module"

Obviousness under § 103 is a two-step inquiry. The first step is a **proper construction of the claims**. ... The second step requires a **comparison of the properly construed claim to the prior art**.<sup>1</sup> As set forth in M.P.E.P. 2111, "During patent examination, the pending claims must be given their broadest reasonable interpretation consistent with the

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<sup>1</sup> Medichem, S.A. v. Rolabo, S.L., 353 F.3d 928, 933 (Fed. Cir. 2003) (internal citations omitted).

specification. Specifically, the Federal Circuit's en banc decision in Phillips v. AWH Corp., 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005) expressly recognized that the USPTO employs the "broadest reasonable interpretation" standard.<sup>2</sup>

Thus, properly construed under M.P.E.P. 2111, "description of a computing application" means "a description of a computing application" applying principles of ordinary meaning and Applicant's use of the same in Applicant's specification. Likewise, "object parameters for the computing application" means "parameters for an object of the computing application". Finally, "coding module" means "programmatic code enabled to provide coding services". In establishing a proper claim construction for the foregoing terms, it will be clear to Examiner that in comparing claims 1, 12 and 19 with properly construed claim terms, the combination of Hejlsberg and Ferstl do not include each element claimed in claims 1, 12 and 19.

#### V. Conclusion

Applicant respectfully requests the withdrawal of the rejections under 35 U.S.C. § 103(a) owing to the clearly distinctive nature of Applicant's invention as recited in amended claims 1, 12 and 19. The Applicant requests that the Examiner call the undersigned if clarification is needed on any matter within this Amendment, or if the

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<sup>2</sup> The Patent and Trademark Office ("PTO") determines the scope of claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction "in light of the specification" as it would be interpreted by one of ordinary skill in the art." In re Am. Acad. of Sci. Tech. Cir., 367 F.3d 1359, 1364, 70 USPQ2d 1827 (Fed. Cir. 2004). Indeed, the rules of the PTO require that application claims must "conform to the invention as set forth in the remainder of the specification and the terms and phrases used in the claims must find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description." 37 CFR 1.75(d)(1).

Examiner believes a telephone interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,

Date: September 28, 2009

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